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NO. A-194

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

RICHARD J. WAGNER,
APPELLANT

vs.

UNITED STATES BANKRUPTCY COURT, N.E.D., PA.

APPEAL FROM THE ORDER ENTERED ON 11/10/88
IN THE U.S. DISTRICT COURT, N.E.D., PA.

BRIEF OF PENNSYLVANIA NATIONAL BANK AND TRUST COMPANY (INTERESTED PARTY AGAINST WHOM RELIEF IS SOUGHT) IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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DATE: November 14, 1989

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QUESTIONS PRESENTED FOR REVIEW

Whether the United States District Court, Eastern District of Pennsylvania, judgment denying Appellant's Petition for Mandamus (as subsequently affirmed by the United States Court of Appeals, Third Circuit) was in error.

SUGGESTED ANSWER: No.

PARTIES

(a) Appellant is Richard J. Wagner.

(b) Appellee is United States Bankruptcy Court, Eastern District of Pennsylvania.

(c) Pennsylvania National Bank and Trust Company ("Bank") is an interested party in that the Petition for Mandamus sought relief against Pennsylvania National Bank and Trust Company, based upon an adversary Complaint filed in the aforesaid Bankruptcy Court.

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GROUNDS FOR JURISDICTION

The jurisdiction of the District Court (Eastern District, Pennsylvania) was based on the fact that the original documents in this matter ("Petition for Writ of Mandamus") name as Defendant/Respondent the United States Bankruptcy, Eastern District, Pennsylvania, and said Petition arose out of the dismissal of Wagner's bankruptcy case (See 28 USC 1346 (a,2) and 28 USC 1334).

Appellate Jurisdiction to the United States Court of Appeals was based on the fact that Wagner appealed from a final Order of the United States District Court, Eastern District, Pennsylvania, and thus, Appellate Jurisdiction was vested per 28 USC 1291.

Appellate seeks to invoke the jurisdiction of this Honorable Court based upon said Court's authority to grant Certiorari, pursuant to Rule 19 of the Rules of said Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Appellant has not listed, in his Petition, any statement of Constitutional questions involved, and is therefore in violation of Rule 21 of this Honorable Court.

Bank believes there are no such issues involved, and accordingly, the Petition should be denied.

CONCISE STATEMENT OF CASE

The pending case is unfortunately marred by the deliberate efforts of Wagner to abuse the legal process as a pro se litigant, hence, a concise statement of the case is difficult.

The case began by Wagner filing for relief in the Bankruptcy Court of the Eastern District of Pennsylvania (#84-03151T) on September 25, 1988. One of the principal creditors of Wagner was Pennsylvania National Bank and Trust Company ("Bank"). Wagner failed to file the proper bankruptcy schedules within fifteen (15) days of the date of filing of his Petition. Instead, in the months after filing his Petition, he filed various Motions, including an adversary action against Bank. Bank filed a Petition to Terminate the Automatic Stay imposed by Section 362 of the Bankruptcy Code in order to proceed with

foreclosure of real estate owned by Wagner. At a hearing on this matter on June 4, 1986, Bankruptcy Judge Twardowski dismissed the bankruptcy action due to Wagner's failure to file the required schedules. Wagner did not appeal the decision of the Bankruptcy Court, but rather, on June 13, 1986, filed with the Bankruptcy Court a "Motion to Modify Order" which was moot since the case had been dismissed.

Wagner thereafter (on February 5, 1989) filed a Writ of Mandamus in the United States District Court - Eastern District, Pennsylvania, to compel the Bankruptcy Court to adjudicate his Petition and entertain his adversary complaint against Bank. This was dismissed by Order of Huyett, J., on November 9, 1988.

On December 12, 1988, counsel for the Bank received from Wagner a document entitled "Petition for Allowance of Appeal" to which

Bank filed an Answer of December 14, 1988. Thereafter, Bank's counsel was informed by Judge Huyett's law clerk that Wagner had never filed this Petition. Bank's counsel, therefore, supplied the court with a copy of Wagner's Petition, which resulted in Judge Huyett's order of December 29, 1988, which deemed Wagner's Notice to be timely filed.

The United States Court of Appeals, Third Circuit, affirmed the District Court's decision by Order dated November 10, 1988, and Wagner's Petition for rehearing before that Court was denied on June 5, 1989.

By Order of Justice Brennan dated September 9, 1989, Wagner was given until November 2, 1989 to file a Petition for Writ of Certiorari, which Petition was received by Bank's counsel on November 1, 1989.

BASIS OF FEDERAL JURISDICTION IN FIRST INSTANCE

The jurisdiction of the District Court (Eastern District, Pennsylvania) was based on the fact that the original documents in this matter ("Petition for Writ of Mandamus") name as Defendant/Respondent the United States Bankruptcy, Eastern District, Pennsylvania, and said Petition arose out of the dismissal of Wagner's bankruptcy case (See 28 USC 1346 (a,2) and 28 USC 1334).

CONCISE STATEMENT OF BANK'S ARGUMENT

It is respectfully submitted that, in order for the Court to arrive at a proper determination of this matter, one must largely ignore the convoluted group of pleadings filed by Wagner and focus on the central issue.

Wagner was a bankrupt. While in bankruptcy, he filed an adversary proceeding against Bank, which was attempting for foreclosure on his property. Bank filed a Petition to Terminate the Automatic Stay and/or dismiss the bankruptcy. At the hearing on this matter (on June 4, 1986), at which Wagner was present, Bankruptcy Judge Twardowski dismissed the Bankruptcy Petition due to Wagner's failure to comply with the mandatory filing deadline for the various bankruptcy schedules. Wagner chose not to appeal therefrom, but filed a subsequent

motion in Bankruptcy Court which was denied. This motion was filed on June 13, 1986 and was moot due to the aforesaid dismissal.

On February 5, 1987, Wagner filed a Petition in the Eastern District Court for Mandamus directed toward the Bankruptcy Court, presumably to have that court adjudicate the June 13, 1986 Motion. Although Bank had not been named as a party in the actual Mandamus Petition, Bank has filed responsive pleadings due to the fact that the initial motion sought relief against Bank, presumably based on the same theory as the adversary action.

Judge Huyett of the United States District Court, Eastern District, correctly pointed out in his opinion that Mandamus is a drastic remedy to be invoked only in extraordinary situations which amount to a judicial usurpation of the power, therein citing Allied Chemical Corp. vs. Daiflon, Inc. 449 US 33, 34-45 (1980).

As Judge Huyett pointed out, to the extent that Wagner disagreed with the Bankruptcy Court's findings, his remedy was an appeal from the Bankruptcy Court's Order of Dismissal, not a Petition for Writ of Mandamus, since Mandamus cannot be used where there are other means to attain the relief desired, Kerr vs. U.S. District Court, 426 U.S. 394, 403 (1976) and Roche vs. Evaporated Milk Association, 319 U.S. 21, 26 (1943).

Judge Huyett's decision was affirmed by the United States Court of Appeals, Third Circuit, without opinion on May 12, 1989, and that Court denied rehearing by Order June 5, 1989.

In his Petition for Certiorari, Wagner makes the broad claim that the legal process has broken down, that the present case presents questions of immediate importance which are substantial, were properly raised

below, and that the lower court decisions cannot be sustained on independent grounds of law (see Page 4 of Petition for Writ of Certiorari).

Bank believes that Wagner had available to him the right to appeal the Bankruptcy Court Order of June 4, 1986, which dismissed his case. Any subsequent filings with the Bankruptcy Court are moot due to this dismissal. Judge Huyett, in his well reasoned opinion, correctly states that the pro se status of litigants does not relieve them of their duty to comply with filing requirements and deadlines (citing Mozur v. Pa. Dept. of Transportation 507 F. Supp. 3, E.D. Pa. 1980). That Wagner himself is the person abusing the legal process is suggested by footnote 2 of Judge Huyett's decision where it is pointed out that, although Wagner argued he was never notified of the June 4, 1986 Bankruptcy Court

Order of Dismissal, his June 13, 1986 motion and suggested Order refers to that very decision.

Accordingly, Bank sees no basis for this Honorable Court to grant Certiorari and requests the Petition be denied.

NO. A-194

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1989

RICHARD J. WAGNER,
Appellant

vs.

UNITED STATES BANKRUPTCY COURT, N.E.D., PA.

CERTIFICATE OF SERVICE

The undersigned, counsel for Pennsylvania National Bank and Trust Company, hereby certifies that a true and correct copy of the within Brief was this day served upon the following by certified mail, return receipt requested:

Richard Wagner
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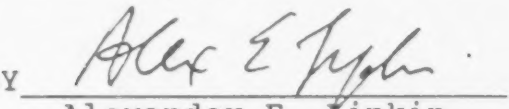
BY 
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